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1 2013 MAR -7 AM 8: 30 BEFORE THE FEDERAL ELECTION COMMISSION 2013 MAR 5 PM 3: 45

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3 In the Matter of)
4)
5 MUR 6580)
6 Treva Johnson for Congress and)
7 Larry Pendry as treasurer)
8 Treva Johnson)
9)

CELA
DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria
12 as a basis to allocate its resources and decide which matters to pursue. These criteria include,
13 without limitation, an assessment of the following factors: (1) the gravity of the alleged
14 violation, taking into account both the type of activity and the amount in violation; (2) the
15 apparent impact the alleged violation may have had on the electoral process; (3) the
16 complexity of the legal issues raised in the matter; and (4) recent trends in potential violations
17 of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of
18 the law. It is the Commission's policy that pursuing relatively low-rated matters on the
19 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases
20 under certain circumstances.

21 The Office of General Counsel ("OGC") has scored MUR 6580 as a low-rated matter
22 and has determined that it should not be referred to the Alternative Dispute Resolution Office
23 ("ADRO"). For the reasons set forth below, OGC recommends that the Commission exercise
24 its prosecutorial discretion and dismiss MUR 6580 as to Respondents Treva Johnson for
25 Congress and Larry Pendry in his official capacity as treasurer (collectively the
26 "Committee"), and Respondent Treva Johnson.¹

¹
from Respondents filed: July 20, 2012.

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27 The Complaint asserts that the Committee violated the reporting requirements under
28 2 U.S.C. § 434(a)(2)(A)(iii) by failing to file any quarterly reports after raising over \$5,000
29 and, thereby, qualifying as a candidate under 2 U.S.C. § 431(2) and 11 C.F.R. § 100.3.
30 Compl. at 1. The Complaint states that Treva Johnson's ActBlue fundraising website page
31 indicated that she had raised at least \$5,484 as of January 19, 2012. Compl. at 1, 4. The
32 Complaint also includes a screenshot of an FEC Summary Report page, which shows that
33 Treva Johnson had not filed any disclosure reports as a candidate for North Carolina's Fifth
34 Congressional District. Compl. at 14.

35 The Committee concedes that it received over \$5,000 in contributions by the end of
36 December 2011 and failed to file either a 2011 Year-End Report or a 2012 April Quarterly
37 Report, as required by the Act. Resp. at 1. The Committee offers that its failure to file was
38 due to a clerical oversight. *Id.* More specifically, the Committee attached to its Response
39 both its 2011 Year-End Report² and 2012 April Quarterly Report³ dated July 19, 2012.⁴

40 Notably, the Committee has since failed to file its 2012 July Quarterly Report, 2012
41 October Quarterly Report, and 2012 Year-End Report. On February 4, 2013, RAD sent the
42 Committee two Nonfiler Notices (RQ-7s) regarding the 2012 July and October Quarterly

² The 2011 Year-End Report appears to be inaccurate: the Committee states that none of the contributions reported came from the candidate, Report at 3, but the itemized list indicates that at least seven contributions were made by Treva Johnson. Report at 15-17. The Committee reflected the contributions on line 11(a) as total contributions to the Committee, as opposed to line 11(d) as required.

³ The 2012 April Quarterly Report appears to be incorrect: the Committee identified the Report as a "January Year-End Report," and only provided activity for the period of January 1 to March 30, excluding March 31.

⁴ The 2011 Year-End Report and 2012 April Quarterly Report were not posted to the FEC website until February 4, 2013, because the reports were mistakenly filed with OGC instead of the Reports Analysis Division ("RAD").

43 Reports, respectively, and on February 22, 2013, RAD sent an RQ-7 as to the 2012 Year-End
44 Report.⁵ The Committee has not filed any additional reports.

45 Under the Act, an individual becomes a "candidate" for federal office when he or she
46 has received or made in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2).
47 Upon becoming a candidate, the individual and his or her principal campaign committee are
48 subject to registration and reporting requirements under the Act. The individual must file a
49 Statement of Candidacy, designating a principal campaign committee therein, no later than
50 fifteen days after becoming a candidate. 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1. The
51 committee then has ten days to register with the Commission by filing a Statement of
52 Organization. 2 U.S.C. § 433(a); 11 C.F.R. § 102.1. Thereafter, the committee must file
53 financial disclosure reports, including filing quarterly reports no later than the fifteenth day
54 after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii).

55 The Committee admits that it failed to file a timely 2011 Year-End Report and 2012
56 April Quarterly Report. Additionally, the Committee has failed to file its 2012 July and
57 October Quarterly Reports, as well as its 2012 Year-End Report, in violation of 2 U.S.C.
58 § 434(a)(2)(A)(iii). The Committee's 2012 April Quarterly Report, however, indicates
59 minimal activity; the Committee received \$355 in receipts during the covered period.⁶

⁶ Press accounts show that Treva Johnson did not participate in an election during the 2012 election cycle, as she dropped out of the race in January 2012, months before the June 15, 2012 North Carolina primary. See Keith T. Barber, *Elisabeth Motsinger Looks To Unseat Virginia Foxx*, YES! WEEKLY, Feb. 16, 2012, <http://www.altweeklies.com/aan/elisabeth-motsinger-looks-to-unseat-us-rep-virginia-foxx/Story?oid=5881431> (stating that Treva Johnson dropped out of the race on Jan. 12, 2012); Travis Fain, *State and Local Briefs* –

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61 Accordingly, OGC recommends that the Commission exercise its prosecutorial
62 discretion and dismiss this matter under *Heckler v. Chaney*, 470 U.S. 821 (1985) as to the
63 Committee's failure to file, or timely file, disclosure reports with the Commission under
64 2 U.S.C. § 434(a)(2)(A)(iii). OGC also recommends that the Commission remind the
65 Committee of the requirements under 2 U.S.C. § 434(a)(2)(A)(iii) for principal campaign
66 committees to file quarterly reports with the Commission no later than the fifteenth day after
67 the last day of each calendar quarter.

68 The Committee's 2011 Year-End Report indicates that it exceeded the \$5,000 filing
69 threshold when it received \$6,000 from Treva Johnson on November 4, 2011. The
70 candidate's Statement of Candidacy was filed on November 23, 2011, nineteen days after she
71 became a candidate. While Johnson filed her Statement of Candidacy four days late, she filed
72 it before any complaint was made or Commission action was taken. In light of the relatively
73 minor delay in filing her Statement of Candidacy, OGC recommends that the Commission
74 exercise its prosecutorial discretion and dismiss this matter under *Heckler v. Chaney*, 470 U.S.
75 821 (1985) as to Treva Johnson's failure to file a timely Statement of Candidacy with the
76 Commission under 2 U.S.C. § 432(e)(1).

77 **RECOMMENDATIONS**

- 78 1. Dismiss the allegations that Treva Johnson for Congress and Larry Pendry in his
79 official capacity as treasurer violated 2 U.S.C. § 434(a)(2)(A)(iii) by failing to file,
80 and timely file, disclosure reports with the Commission, pursuant to the
81 Commission's prosecutorial discretion;

Motsinger Starts Campaign for 5th District Seat, WINSTON-SALEM JOURNAL, Jan. 18, 2012,
http://www.journalnow.com/news/local/article_2077b9e3-7901-5516-94d3-22bc1c72a92f.html (stating that
Treva Johnson had dropped out the previous week). Under these circumstances, in addition to the lack of
activity found on the Committee's 2012 April Quarterly Report, it is unlikely that the Committee received any
substantial contributions or made any significant expenditures after March 31, 2012.

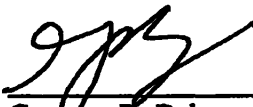
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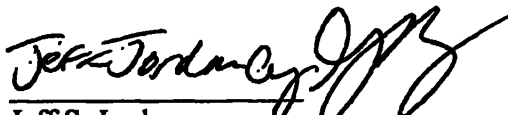
2. Remind Treva Johnson for Congress and Larry Pendry in his official capacity as treasurer of the requirements under 2 U.S.C. § 434(a)(2)(A)(iii), concerning the timely filing of disclosure reports with the Commission;
3. Dismiss the allegation that Treva Johnson violated 2 U.S.C. § 432(e)(1) by failing to file a timely Statement of Candidacy, pursuant to the Commission's prosecutorial discretion;
4. Approve the attached Factual & Legal Analyses; and
5. Close the file.

Anthony Herman
General Counsel

3/5/13
Date

BY:


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Deputy General Counsel


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